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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,975	03/13/2001	Heinz Mueller	7040-24	9365

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EXAMINER
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STEWART, ALVIN J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 05/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/804,975

**Applicant(s)**

MUELLER ET AL.

**Examiner**

Alvin J Stewart

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-57 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-57 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>04/27/04</u>  | 6) <input type="checkbox"/> Other: _____                                    |

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 27, 2004 has been entered.

***Response to Arguments***

Applicant's arguments filed April 27, 2004 have been fully considered but they are not persuasive.

The Moriuchi et al reference clearly discloses the adjacent tubular portions being aligned coaxially to each other. As shown in Figures 1, 9 & 12 the cell-shaped elements are coaxially to each other because every cell-shaped elements have the same circumference and are located adjacent to each other. Every cell-shaped element share the same axis, therefore, the cell-shaped elements are coaxial to each other.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 8, 10-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriuchi et al US Patent 5,879,381.

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Moriuchi et al discloses a catheter (see Figure 11) and a stent (17) (see Fig. 9) comprising a plurality of tubular portions (18a-18h), connecting bars (19a-19g) and cell-shaped elements. The tubular portions are adjacently arranged in the longitudinal direction and comprise a plurality of interconnected cell-shaped elements which are connected in the longitudinal direction by the connecting bars and connected around the periphery of the stent by way of second connecting means (21). The end of the elements defines an edge contour extending around the stent in a wave-like configuration. The two-edge contour of one of the tubular portions extends in in-phase relationship with each other and engages into each other in the manner of a tooth configuration. The connecting bars are *substantially* parallel to the longitudinal axis of the stent.

The claims disclosed above are given their broadest reasonable interpretation. In re Pearson, 181 USPQ 641 (CCPA 1974).

In claim 1, line 5, the word “substantially” has been interpreted broadly and does not provide any indication as to what range of specific activity is covered. The Examiner has interpreted the brief inclination of the connecting bar (19a) of the Moriuchi et al reference as been substantially parallel to the longitudinal direction. However, the Applicant discloses in the specification that the connecting bars can be of a different configuration and/or arrangement (see Applicant’s specification, paragraph 38).

Regarding claims 4, and 12-14, the Examiner interpreted the phrase “same orientation” as the parallel orientation made by the longitudinal axes of each element to the longitudinal axis of the stent (see page 10, paragraph 36).

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Regarding claims 47-53, the phrase "half a period" has been interpreted as the distance from the peak of one element end to the valley of the same element end (see attachment).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 54-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moriuchi et al US Patent 5,879,381 in view of Kranz US Patent 5,968,093.

Moriuchi et al discloses the invention substantially as claimed. However, Moriuchi et al does not disclose second connecting means having a S-shape and/or an inclination.

Kranz teaches a plurality of cell-shaped elements connected one to the others in the peripheral direction by a plurality of second connecting means (11') having a S-shape for the purpose of minimizing the deformation of the stent (see col. 6, lines 26-28 and Fig. 3). Additionally, the second S-shape connecting means facing the same peripheral direction of elements in mutually adjoining relationship in the longitudinal direction of the stent are arranged inclined in opposite relationship with respect to the peripheral direction (see Figure 3).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the straight second connecting means of the Kranz reference with the S-shape second connecting means of the Moriuchi et al reference in order to minimize the deformation of the stent during expansion (see col. 6, lines 26-28).

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin J Stewart whose telephone number is 703-305-0277. The examiner can normally be reached on Monday-Friday 7:00AM-5:30PM(1 Friday B-week off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-308-2708 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

*A. Stewart*

Alvin Stewart  
May 24, 2004.